

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

CITIBANK, N.A, AS TRUSTEE	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 4:05-CV-40045-FDS
	)	
JOHN P. PHELAN, WENDY M. PHELAN,	)	
THE UNITED STATES OF AMERICA,	)	
O'CALLIGHAN CONSTRUCTION	)	
COMPANY AND THE	)	
COMMONWEALTH OF	)	
MASSACHUSETTS' DEPARTMENT OF	)	
REVENUE	)	
	)	
Defendants, and	)	
	)	
DAVID LA BRIE,	)	
	)	
Defendant and Cross-claimant	)	

**NOTICE OF SECOND-TIME SERVICE OF**

**DEFENDANT AND CROSS-CLAIMANT DAVID LA BRIE'S**

**ANSWER AND CROSS-CLAIMS ON DEFENDANT JOHN P. PHELAN**

On February 11, 2005, Mr. La Brie served his Answer and Cross-claims by first-class mail on Mr. Phelan sent to him at 812 West Shore Drive; Ashburn, MA; 01430; that being the address at which plaintiff Citibank had served Mr. Phelan with its complaint and summons, and thereby sufficing as proper service by Mr. La Brie.

Evidently in the interim between Citibank's service and the mailing of Mr. La Brie's paper, Mr. Phelan moved and provided the USPS with a new address, that being PO Box 904; Shirley, MA; 01464; to which the USPS forwarded Mr. La Brie's mailing on February 16, 2005. The mailing sat in that PO box unretrieved by Mr. Phelan up to June 6, 2005, at which time the

USPS closed the box and returned the letter to the office of Peter M. Mirageas, Attorney at Law, where it was received this past Friday, June 10, 2005. Mr. Mirageas had received no notice of Mr. Phelan's new address up to that time.

Based on Mr. Phelan's decision not to pick up his own mail at the forwarding address he provided to the USPS although Mr. Phelan was already a party to this case due to Citibank's service on him of the initiating complaint and summons, Mr. La Brie's position is that Mr. Phelan was served Mr. La Brie's Answer and Cross-claims on February 11, 2005, and that he was in default by failing to answer or otherwise plead under the Federal Rules of Civil Procedure 23 days thereafter, and therefore that this new information does not affect Mr. La Brie's pending request for an entry of default against Mr. Phelan.

Respectfully submitted,

/s/ William M. Palmer

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ATTORNEY FOR DEFENDANT AND  
CROSS-CLAIMAINT DAVID LA BRIE

Date: June 13, 2005

#### CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of this document was served by first class mail on this 13<sup>th</sup> day of June on David M. Rosen, Esq.; Harmon Law Offices, P.C.; 150 California Street; Newton, MA; 02458; John J. Curley, III; McEvilly & Curley; 48 West Street; Suite 1; Leominster, MA; 01453; and John P. Phelan; 1 Catacunamaug Road; Shirley, MA 01464.

/s/ William M. Palmer

June 13, 2005

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WILLIAM M. PALMER

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DATED